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6 IN THE UNITED STATES DISTRICT COURT

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10 UNITED STATES OF AMERICA,  
11 Plaintiff, No. CR 14-00306 WHA  
12 v.  
13 LUKE D. BRUGNARA,  
14 Defendant.

15 \_\_\_\_\_ /  
16 ORDER DISMISSING SECTION  
17 2255 PETITION

18 Pro se defendant Luke Brugnara moved to vacate, set aside, or correct his sentence on  
19 the basis of ineffective assistance of pre- and post-trial counsel (Dkt. No. 829). An order  
20 directed the government to show cause why defendant's motion should not be granted (Dkt. No.  
21 831). In response, the government moved to dismiss defendant's motion on the grounds that  
22 defendant continues to pursue direct appeals, and accordingly, his habeas petition is premature  
23 (Dkt. No. 833). Indeed, defendant has continued to appeal his conviction, and currently has a  
24 petition for a writ of certiorari pending before the United States Supreme Court (Dkt. No. 838).

25 "A district court should not entertain a habeas corpus petition while there is an appeal  
26 pending in this court or in the Supreme Court." *Feldman v. Henman*, 815 F.2d 1318, 1320 (9th  
27 Cir. 1987); *see also United States v. LaFromboise*, 427 F.3d 680, 686 (9th Cir. 2005) ("[U]ntil  
28 direct appellate review is exhausted the district court may not entertain a motion for habeas  
corpus relief."). "The reason for this rule is that 'disposition of the appeal may render the [habeas  
corpus writ] unnecessary.'" *Feldman*, 815 F.3d at 1320 (quoting *United States v. Black*, 269  
F.2d 38, 41 (9th Cir. 1959)).

**United States District Court**

For the Northern District of California

1        Because defendant is still in the process of pursuing his direct appeal, his habeas petition  
2 is premature. Contrary to defendant's assertions, no "extraordinary circumstances" warrant  
3 "immediate adjudication" of his Section 2255 motion (*see* Dkt. No. 834 at 2). Accordingly, his  
4 Section 2255 petition is **DENIED** without prejudice to renewal should the need arise once he has  
5 exhausted his direct appeals.

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7        **IT IS SO ORDERED.**

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10      Dated: October 23, 2017.

  
WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

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